

Ding Poi Kooi v Nazaruddin bin Sahie

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MAHKAMAH TINGGI (KUALA LUMPUR) — SAMAN PEMULA NO S4-
24-524 OF 1996

RAHMAH HUSSAIN J

28 JUN 1999

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Undang-Undang Tanah — *Halangan pengurusan tanah — Kaveat persendirian — Perlanjutan* — Sama ada mahkamah ada bidang kuasa untuk melanjutkan, memperbaharui atau menghidupkan semula kaveat yang telah dialih oleh pentadbir tanah — Sama ada mahkamah boleh melanjutkan hak yang telah luput

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Sahie bin Baginda, si mati, telah meninggalkan enam bidang tanah. Defendan telah diberi hak untuk mentadbir harta pusaka si mati. Pada 27 November 1985, plaintif telah menandatangani suatu perjanjian jual beli dengan seorang bernama Summugam a/l S Ramasamy (yang mengakui sebagai penerima surat kuasa wakil kedua) untuk membeli keenam-enam bidang tanah tersebut dengan harga jualan sebanyak RM200,000. Suatu kaveat telah dimasukkan oleh plaintif. Pentadbir tanah telah mengalih kaveat tersebut pada 1 Oktober 1996. Plaintif telah memohon agar tempoh kaveat persendiriannya dilanjutkan sehingga kedudukan plaintif dalam hartanah diselesaikan.

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Diputuskan, menolak permohonan plaintif:

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(1) Apabila suatu kaveat luput, mahkamah tiada kuasa untuk menghidupkan, memperbaharui atau melanjutkan kaveat tersebut kerana pengalihannya adalah muktamad dan tidak boleh ditarik balik. Mahkamah tiada bidang kuasa yang sedia ada untuk melampaui kuasa-kuasa yang diberikan secara nyata oleh statut (lihat ms 278I-279A); *RAP Nathan v Haji Abdul Rahman bin Haji Yusoff & Ors* [1965] 1 MLJ 248 diikuti.

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(2) Peruntukan di bawah Kanun Tanah Negara 1965 bagi perlanjutan kaveat adalah s 326. Namun, perkataan 'melanjutkan' di dalam s 326(2) KTN hanya membesarkan atau melanjutkan tempoh apa-apa hak yang ada dan bukan memberikan semula hak yang telah luput (lihat ms 276I-277E); *Lim Kiat Moy v Hamzah* [1966] 2 MLJ 175 diikuti.

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[English summary]

Sahie bin Baginda, deceased left six pieces of land. The defendant was given the right to administer the estate of the deceased. On 27 November 1985, the plaintiff had signed an agreement with one Summugam s/o S Ramasamy (who admits receiving the second letter of administration) to purchase the six pieces of land at a selling price of RM 200,000. A caveat was entered by the plaintiff. The land administrator had removed the caveat on 1 October 1996. The plaintiff applied for extension of the private caveat until the plaintiff's position in the property was clarified.

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A Held, dismissing the plaintiff's application:

(1) When a caveat lapsed, the court has no power to revive, renew or continue a caveat as its extinction is final and irrevocable. The court has no inherent jurisdiction to go beyond the powers expressly given by statute (see pp 278I-279A); *RAP Nathan v Haji Abdul Rahman bin Haji Yusoff & Ors* [1965] 1 MLJ 248 followed.

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(2) The provision under the National Land Code 1965 to extend time is s 326. However, the word 'extend' in s 326(2) of the NLC only enlarges or gives further duration to any existing right rather than re-vest an expired right (see pp 276I-277E); *Lim Kiat Moy v Hamzah* [1966] 2 MLJ 175 followed.]

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Nota-nota

Bagi kes-kes mengenai kaveat secara am, lihat 8 *Mallal's Digest* (4th Ed, 1999 Reissue) para 2580-2810.

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Kes-kes yang dirujuk

Lim Kiat Moy v Hamzah [1966] 2 MLJ 175 (diikut)

KI Muhiudeen Rawther v KEP Abdul Kassim & Ors [1959] MLJ 257 (refd)

E

RAP Nathan v Haji Abdul Rahman bin Haji Yusoff & Ors [1965] 1 MLJ 248 (diikut)

Undang-undang yang dirujuk

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Kanun Tanah Negara 1965 ss 326(1), (1A), (2), 417

Maurice Scully (Boo Yeang Kiang & Partners) untuk plaintif.

Mohd Faizal bin Khalid (Sabri Ahmad & Khairul Azman) untuk defendan.

Cur Adv Vult

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Rahmah Hussain J: Permohonan plaintif dalam kes ini adalah untuk mendapatkan perintah seperti berikut:

(a) bahawa kaveat persendirian yang dimasukkan oleh plaintif melalui Perserahan No 2412/95 Jilid 54 Folio 59 ke atas hartanah HS (M) 765, No PT 9563, Mukim Batu, Daerah Kuala Lumpur, Negeri Selangor Darul Ehsan pada 18 Mei 1995 dilanjutkan selama enam tahun dari 18 Mei 1995 dan/atau berkekalan sehingga perkara mengenai kedudukan kepentingan plaintif dalam hartanah HS (M) 765, No PT 9563, Mukim Batu, Daerah Kuala Lumpur, Negeri Selangor Darul Ehsan diselesaikan di mahkamah yang mana lebih awal;

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(b) bahawa Pentadbir Tanah Daerah Gombak, Kuala Lumpur dengan serta merta selepas diserahkan dengan satu salinan sah perintah ini, mendaftarkan perlanjutan kaveat persendirian tersebut; dan

(c) lain-lain relief yang difikirkan patut dan wajar oleh mahkamah.

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Latarbelakang kes ini adalah seperti berikut: tuannya enam bidang tanah, termasuk hartanah tersebut ialah Sahie bin Baginda yang telah meninggal dunia pada 29 Mac 1980.

(Sila lihat eks NS1 & NS2 — kand 5.)

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Defendan adalah anak kepada Sahie bin Baginda yang telah mendapat perintah dari pejabat tanah pada tahun 1984 sebagai pentadbir kepada harta pesaka Sahie. Beliau telah mendaftar nama sebagai pentadbir pada 18 Disember 1985.

Sementara itu pada 27 November 1985, plaintif telah menandatangani suatu perjanjian jual beli dengan seorang bernama Summugam a/l S Ramasamy (yang mengakui sebagai penerima surat kuasa wakil kedua) untuk membeli keenam-enam bidang tanah tersebut dengan harga jualan sebanyak RM200,000. Plaintif telah membuat bayaran sebanyak RM135,000 semasa perjanjian jual beli ditandatangani.

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(Sila lihat eks DPK3 — kand 2.)

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Kemudian plaintif telah memasukkan satu kaveat persendirian ke atas hartanah tersebut.

(Sila lihat eks DPK 6 — kand 2.)

Pada bulan Januari 1986, plaintif telah membayar baki harga jualan sebanyak RM65,000 kepada Tetuan Shahrudin & Associates, iaitu peguam Summugam a/l S Ramasamy. Pada 17 Februari 1986 pula, Summugam telah melantik plaintif sebagai penerima surat kuasa wakil, melalui satu surat kuasa wakil penggantian, untuk menggantikannya. Satu geran yang kononnya geran asal telah diberikan kepada plaintif pada tarikh yang sama.

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Berdasarkan carian persendirian yang dibuat oleh plaintif di pejabat tanah berkenaan, beliau mendapati ada dua geran hakmilik asal yang berlainan kerana satu geran asal yang disimpan oleh plaintif (tanpa pengendorsan bahawa hartanah Sahie ditadbir oleh defendan) dan satu lagi geran yang menunjukkan pengendorsan bahawa hartanah Sahie ditadbir oleh defendan.

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Isu utama dalam permohonan ini ialah, sama ada mahkamah ini mempunyai bidang kuasa untuk melanjutkan kaveat persendirian yang telah dialih oleh Pentadbir Tanah pada 1 Oktober 1996. Mengikut hujahan peguam plaintif, mahkamah ini mempunyai budi bicara dan bidang kuasa mengikut s 417 Kanun Tanah Negara 1965 untuk mengarahkan Pentadbir Tanah melanjutkan tempoh kaveat plaintif sehingga perkara di mahkamah ini dapat diselesaikan dan/atau mengekalkan kaveat plaintif bertarikh 18 Mei 1985 dan atau menghidupkan semula kaveat plaintif yang telah dialih.

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Peruntukan di bawah Kanun Tanah Negara 1965 bagi perlanjutan kaveat ialah s 326 Kanun Tanah Negara 1965 yang mana diperuntukkan bahawa:

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- A** 326 (1) Any person or body whose land or interest is bound by a private caveat may at any time apply in Form 19H to the Registrar for its removal, and such application shall be accompanied by the prescribed fee.
- (1A) On receiving any application for removal under this section, the Registrar shall —
- B** (a) serve upon the person or body at whose instance the caveat was entered a notice of intended removal in Form 19C; and
- (b) make an endorsement on the register document of title that the notice in Form 19c has been served on the person or body at whose instance the caveat was entered and of the date of such service, and shall sign and seal the endorsement.
- C** (1B) ...
- (2) The Court may, on the application of any person or body on whom such a notice has been served under subsection (1A) (and acting, if the circumstances so require, ex parte), from time to time extend the said period of two months; and the Registrar, on being duly served with an order of the Court under this sub-section, shall make an endorsement on the register document of title of the date of service on him of the order and of the period of the extension, and shall sign and seal the endorsement.
- D**

E Salah satu kes yang memutuskan bahawa mahkamah tidak mempunyai bidang kuasa untuk melanjutkan kaveat persendirian yang telah dialih ialah *Lim Kiat Moy v Hamzah* [1966] 2 MLJ 175 di mana (di ms 176 perenggan akhir sebelah kiri sehingga perenggan E sebelah kanan), Raja Azlan Shah H (Tuanku pada masa itu) berpendapat bahawa:

F This case brings into review the provisions of s 326 of the National Land Code. That section enacts that any person whose land is bound by a private caveat may apply to the Registrar (in the present case the collector) for its removal and the collector shall serve upon the caveator a notice of intended removal in Form 19C and subject to sub-s (2) remove the caveat at the expiry of the period of one month specified in that notice. In the instant case, the caveat lapses at the expiry of one month specified in the notice, ie 21 April 1966. However, the section is what I may say controlled by sub-s (2), that is the court may on the application of the caveatee from time to time extend the said period of one month and the collector on being duly served with a court order shall not remove the caveat until the expiry of the said period as thereby extended. That section is not analogous to s 171 of the repealed Land Code (Cap 138) for the latter section expressly states that the proper registering authority shall remove a caveat at the expiry of the 21 days after notice on the caveator unless he shall have been previously served with a court order extending the time as provided for by s 172. That means the court order extending the time must be served upon the proper registering authority during the life of the caveat. The case of *Chow E Wha v Registrar of Titles & Ors* [1948-49] MLJ Supp 119 is authority for the proposition. There is therefore a manifest distinction between the two sections and that case cannot accordingly be invoked into a consideration of the instant case on the ground that sub-s (2) of s 326 of the National Land Code is wide and does not specify the time limit for service of the court order on the collector. The question therefore arises whether sub-s (2) enacts that the court order must be served on the collector before the caveat becomes spent.

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Seterusnya, di mukasurat yang sama, perenggan H sebelah kanan, dinyatakan bahawa:

The object of sub-s (2) is to extend the duration of the caveat and the subsection must therefore be construed so as to give effect to that general purpose. To my mind the word 'extend' is used in the common intercourse of mankind and the popular meaning attributed to it is that it enlarges or gives further duration to any existing right rather than re-vest an expired right. To construe it otherwise seems to me not only to place a strained construction on the words of the sub-section but also to introduce a term which is unreasonable in two respects: firstly, it would not be an 'extension' but a 're-creation', and predicating the purpose of the section to be to benefit a caveator by the extension of his rights, is adopting a very different idea from re-creating an expired right; secondly, it would be inconsistent with the general tenor of the phrase 'the Registrar on being duly served with any order of the court under this sub-section shall not remove the caveat until the expiry of the said period as thereby extended' for that would imply that only when there exists a caveat can the Registrar be said 'not to remove' the same. The word 'extend' is too strong for me to grapple with, and if the court were to get rid of its operation, a great public injury would be affected by calling back a right that by lapse of time had become extinct. In my view the language of the section is wholly prospective.

Syed Agil Barakbah (pada masa itu) juga memberi pendapat yang sama dalam kes *RAP Nathan v Haji Abdul Rahman bin Haji Yusoff & Ors* [1965] 1 MLJ 248 (ms 250 perenggan I sebelah kiri — perenggan A sebelah kanan) iaitu:

Under s 328 the normal life of a caveat is six years. However, it can be sooner withdrawn at the instance of the person or body at whose instance it was entered (s 325) or removed by the Registrar under section 326 or by the order of court on the application of the person or body aggrieved by its existence (s 327). Once it lapsed the court has no power to revive, renew or continue a caveat as its extinction is final and irrevocable. That is because the court has no inherent jurisdiction to go beyond the powers expressly given to it by statute (see *KI Muhiudeen Rawther v KEP Abdul Kassim & Ors* [1959] MLJ 257 at p 258).

Di dalam kes *KI Muhiudeen Rawther v KEP Abdul Kassim & Ors* [1959] MLJ 257 yang telah dirujuk dalam kes *RAP Nathan*, Ong H telah dengan lebih jelas lagi menyatakan (di ms 258 perenggan I sebelah kiri-perenggan A sebelah kanan) bahawa:

This section is thus mandatory on the registering authority to remove the caveat unless, before the caveat lapses on the expiry of the twenty-one days, he shall have been served with an order of court extending the time. Nowhere in Part XIII, nor elsewhere in the Land Code, do I find any provision giving the court power to revive, renew or continue a caveat after its lapse. The extinction is in my view final and irrevocable. It is not within the inherent jurisdiction of the court to make orders which go beyond the limits of the powers expressly given to it by statute and that proposition is self-evident.

Saya bersetuju sepenuhnya dengan pendapat hakim-hakim yang bijaksana dan menerima pakai autoriti-autoriti tersebut. Oleh yang demikian,

- A** berdasarkan kepada autoriti-autoriti yang telah dinyatakan di atas, maka adalah penghakiman saya bahawa bagi melanjutkan keveat pada masa ini adalah terlewat oleh kerana ianya telah dialihkan. Juga mahkamah tiada bidang kuasa untuk melanjutkan sesuatu kaveat yang telah pun dialihkan. Hanya di atas alasan tersebut sahaja saya telah menolak permohonan plaintif dengan kos. Saya berpendapat isu-isu lain yang dibangkitkan oleh
- B** plaintif tidak perlu dipertimbangkan dalam keadaan sekarang. Di dalam keadaan biasa iaitu di mana kaveat belum dialihkan, mungkin ianya boleh diambil kira.

Permohonan plaintif ditolak.

- C** Dilaporkan oleh Benjamin Yong
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